

STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs-

MUHAMMAD ALTANTAWI,

Defendant-Appellant.

Supreme Court

No. 160436

Court of Appeals

No. 346775

Circuit Court

No. 2017-265355-FJ

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PLAINTIFF-APPELLEE'S SUPPLEMENTAL BRIEF

ORAL ARGUMENT REQUESTED

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# TABLE OF CONTENTS

	<u>PAGE</u>
INDEX OF AUTHORITIES CITED.....	iii
RESPONSE TO APPELLANT’S JURISDICTIONAL STATEMENT.....	vi
COUNTER-STATEMENT OF QUESTION PRESENTED.....	vii
COUNTER-STATEMENT OF FACTS .....	1
SUMMARY OF THE ARGUMENT .....	22
ARGUMENT	
I. <b>Defendant was not in custody because his freedom was never curtailed to a degree associated with formal arrest when he was willingly interviewed at the dining room table of his family’s spacious home without any restraints for 38 minutes by three plainclothes police officers whose weapons were concealed, and his age is not a determinative or significant factor in that conclusion given both the setting and his educational background</b> .....	23
<i>Standard of Review &amp; Issue Preservation</i> .....	23
<i>Discussion</i> .....	23
A. <b>The law regarding <i>Miranda</i> custody</b> .....	24
B. <b>The Court of Appeals and the trial court correctly concluded Defendant was not in “custody” for <i>Miranda</i> purposes during the interview</b> .....	26
1. <b>Given the objective circumstances of the interview, a reasonable person in Defendant’s position would have felt free to end the interview and leave</b> .....	27
a. <b>An in-home interview is generally considered noncustodial for <i>Miranda</i> purposes</b> .....	27
b. <b>The age of an individual questioned by police, even when that person is a juvenile, does not apply to the exclusion of all other factors when determining whether the person is in custody for <i>Miranda</i></b>	

purposes and may not be a determinative or even a significant factor.....	32
c. Other factors may also weigh in favor of a conclusion that police questioning did not occur in a custodial environment.....	38
2. Considering the totality of the circumstances, the trial court correctly concluded that Defendant was not in custody for <i>Miranda</i> purposes because a reasonable person in his position would have felt free to end the interview and leave the dining area and because he was neither formally arrested nor restrained to a degree associated with a formal arrest.....	41
C. Defendant’s remaining arguments on this issue lack merit .....	44
D. Conclusion .....	45
RELIEF .....	47

INDEX OF AUTHORITIES CITED

<u>MICHIGAN CASES</u>	<u>PAGE</u>
<i>In re Miller</i> , 433 Mich 331; 445 NW2d 161 (1989).....	26, 43, 45
<i>People v Coomer</i> , 245 Mich App 206; 627 NW2d 612 (2001).....	27
<i>People v Elliott</i> , 494 Mich 292; 833 NW2d 284 (2013).....	24, 28
<i>People v Ish</i> , 252 Mich App 115; 652 NW2d 257 (2002).....	28
<i>People v Mayes (After Remand)</i> , 202 Mich App 181; 508 NW2d 161 (1993).....	27
<i>People v Mendez</i> , 225 Mich App 381; 571 NW2d 528 (1997) .....	38
<i>People v Miller</i> , 482 Mich 491; 647 NW2d 480 (2002).....	23, 26, 32, 38, 46
<i>People v Peerenboom</i> , 224 Mich App 195; 568 NW2d 153 (1997).....	39
<i>People v Sexton (After Remand)</i> , 461 Mich 746; 609 NW2d 822 (2000) .....	26, 43, 45
<i>People v Williams</i> , 472 Mich 308; 696 NW2d 636 (2005).....	23, 46
 <u>FEDERAL CASES</u>	 <u>PAGE</u>
<i>Anderson v Bessemer City</i> , 470 US 564; 105 S Ct 1504; 84 L Ed 2d 518 (1985).....	30
<i>Beckwith v United States</i> , 425 US 341; 96 S Ct 1612; 48 L Ed 2d 1 (1976).....	27
<i>Berkemer v McCarty</i> , 468 US 420; 104 S Ct 3138; 82 L Ed 2d 317 (1984) .....	24, 25, 26, 37
<i>California v Beheler</i> , 463 US 1121; 103 S Ct 3517; 77 L Ed 2d 1275 (1983).....	26
<i>Crawford v Washington</i> , 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004) .....	28
<i>Florida v Bostick</i> , 501 US 429; 111 S Ct 2382; 115 L Ed 2d 389 (1991).....	26
<i>Howes v Fields</i> , 565 US 499; 132 S Ct 1181; 182 L Ed 2d 17 (2012) .....	passim
<i>JDB v North Carolina</i> , 564 US 261; 131 S Ct 2394; 180 L Ed 2d 310 (2011) .....	passim
<i>Maryland v Shatzer</i> , 559 US 98; 130 S Ct 1213; 175 L Ed 2d 1045 (2010) .....	24, 25, 27, 42
<i>Miranda v Arizona</i> , 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966) .....	passim
<i>Oregon v Mathiason</i> , 429 US 492; 97 S Ct 711; 50 L Ed 2d 714 (1977).....	25, 27, 38, 41, 42
<i>Orozco v Texas</i> , 394 US 324; 89 S Ct 1095; 22 L Ed 311 (1969).....	28, 29, 31, 32
<i>Stansbury v California</i> , 511 US 318; 114 S Ct 1526; 128 L Ed 2d 293 (1994) .....	26, 41, 43

<i>Thompson v Keohane</i> , 516 US 99; 116 S Ct 457; 133 L Ed 2d 383 (1995).....	23
<i>United States v Bengivenga</i> , 845 F2d 593 (CA 5, 1988).....	26
<i>United States v Bershchansky</i> , 958 F Supp 2d 354 (EDNY, 2013).....	40
<i>United States v Craighead</i> , 539 F3d 1073 (CA 9, 2008).....	29, 31
<i>United States v Faux</i> , 828 F3d 130 (CA 2, 2016).....	28, 29, 31
<i>United States v Freeman</i> , 61 F Supp 3d 534 (ED Va, 2014).....	29
<i>United States v Hammond</i> , 263 F Supp 3d 826 (ND Cal, 2016) .....	29
<i>United States v Hashime</i> , 734 F3d 278 (CA 4, 2013).....	29
<i>United States v Lowen</i> , 647 F3d 863 (CA 8, 2011) .....	40
<i>United States v Luck</i> , 852 F3d 615 (CA 6, 2017).....	28
<i>United States v Ludwikowski</i> , 944 F3d 123 (CA 3, 2019).....	40
<i>United States v Newton</i> , 369 F3d 659 (CA 2, 2004).....	25
<i>United States v Photogrammetric Data Servs</i> , 259 F3d 229 (CA 4, 2001) .....	28
<i>United States v Williams</i> , 760 F3d 811 (CA 8, 2014).....	28, 32
<i>Yarborough v Alvarado</i> , 541 US 652; 124 S Ct 2140; 158 L Ed 2d 938 (2004).....	passim

#### OTHER STATE CASES

#### PAGE

<i>BA v State</i> , 100 NE3d 225 (Ind, 2018).....	33
<i>Commonwealth v Conkey</i> , 430 Mass 139; 714 NE2d 343 (1999).....	28
<i>In Interest of VH</i> , 788 A2d 976; 2001 PA Super 324 (2001) .....	39
<i>In re DLH, Jr.</i> , 2015 IL 117341; 32 NE3d 1075 (2015).....	35
<i>In re JS</i> , 2016-Ohio-255 (Ohio App, 2016).....	39
<i>People v Clark</i> , ___ P3d ___; 2020 CO 36 (Colo, 2020) .....	40
<i>People v Howard</i> , 92 P3d 445 (Colo, 2004).....	35
<i>People v NAS</i> , 329 P3d 285; 2014 CO 65 (Colo, 2014) .....	32
<i>Peterson v State</i> , 813 P2d 685 (Alas App, 1991) .....	28
<i>State v Castillo</i> , 329 Conn 311; 186 A3d 672 (2018).....	35

<i>State v Jensen</i> , 161 Idaho 243; 385 P3d 5 (2016).....	35
<i>State v Jones</i> , 55 A3d 432; 2012 ME 126 (2012).....	32, 33, 34, 35, 36
<i>State v Lonkoski</i> , 346 Wis 2d 523; 2013 WI 30; 828 NW2d 552 (2013) .....	40
<i>State v Pearson</i> , 804 NW2d 260 (Iowa, 2011) .....	32
<i>State v SJW</i> , 149 Wash App 912; 206 P3d 355 (2009).....	35
<i>State v Staats</i> , 658 NW2d 207 (Minn, 2003).....	28

<u>STATUTES</u>	<u>PAGE</u>
MCL 600.215.....	vi
MCL 750.316(1)(a).....	1
MCL 769.4a.....	1

<u>RULES</u>	<u>PAGE</u>
MCR 2.613(C) .....	23, 30
MCR 7.303(B)(1).....	vi
MCR 7.305(B)(5)(a) .....	23
MCR 7.305(C)(2).....	vi

<u>OTHER SOURCES</u>	<u>PAGE</u>
Black's Law Dictionary (9th ed).....	39

RESPONSE TO APPELLANT’S JURISDICTIONAL STATEMENT

The People as Plaintiff-Appellee agree that this Honorable Court has jurisdiction to consider Defendant-Appellant Muhammad Altantawi’s interlocutory application for leave to appeal following an interlocutory decision by the Court of Appeals. Specifically, this Court has jurisdiction pursuant to MCL 600.215, MCR 7.303(B)(1), and MCR 7.305(C)(2).

COUNTER-STATEMENT OF QUESTION PRESENTED

I. When Defendant's freedom was never curtailed to a degree associated with formal arrest because he was willingly interviewed at the dining room table of his family's spacious home without any restraints for 38 minutes by three plainclothes police officers whose weapons were concealed, and because his age was not a determinative or significant factor in that conclusion given both the setting and his educational background, was Defendant in custody for *Miranda* purposes?

The People answer, "no."

Defendant answers, "yes."

The trial court answered, "no."

The Court of Appeals answered, "no."

## COUNTER-STATEMENT OF FACTS

Muhammad Altantawi, hereinafter referred to as Defendant, is charged with First-Degree Premeditated Murder, contrary to MCL 750.316(1)(a). He was bound over to the Oakland Circuit Court on December 8, 2017, with the Honorable Martha D. Anderson presiding. Trial was set for October 8, 2018, but it was adjourned when the defense filed a motion to suppress. An evidentiary hearing, at which Defendant did not testify, was held on September 21 and October 8, 2018. The parties then submitted additional pleadings. The facts elicited at the hearing are outlined below.

### **Evidentiary Hearing:**

#### **The Events of August 21, 2017:**

Around 6:40 a.m. on August 21, 2017, Farmington Hills Police Officer Nathan Jordan was dispatched to 36933 Howard Road because a woman had been injured by falling “10 to 29 feet.” (8b–11b)<sup>1</sup> He was flagged down at the driveway by Aya, the daughter of the injured woman, Nada Huranieh. (11b–12b) Aya led Ofc. Jordan to a patio, onto which Nada appeared to have fallen. (12b–13b, 20b, 23b–24b, 47b) There was an open bedroom window directly above Nada and a dent in a decorative stucco ledge just below it, and a rag was lying nearby. (14b–16b, 18b–20b, 22b, 36b) Nada’s son, Defendant, was kneeling next to her and appeared to be doing chest compressions with his left hand while holding a phone in his right hand. (20b–21b, 47b–48b, 54b) Ofc. Jordan said he would take over CPR, and he asked the children to go to the end of the driveway to wait for the fire department. (21b) He checked Nada for a pulse and bleeding but found neither; in fact, there was no blood at all. (21b, 52b) She was warm, but she appeared dead. (22b, 52b)

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<sup>1</sup> Defendant’s appendix only contains excerpts from the evidentiary hearing. For ease of reference, to avoid forcing the reader to flip between the two appendices to find referenced text, and to ensure that all pertinent facts from the transcripts are readily available for the Court’s review, the People’s appendix contains complete copies of the pertinent transcripts. MCR 7.313(D)(4).

Ofc. Jordan began performing CPR, but when the medics arrived a short time later and took over, he went inside, spoke to Defendant and Aya, and asked them when they had last seen their mother. (21b–22b, 24b–25b, 50b) Defendant said he saw her at 8:00 p.m. the night before, about three hours before he went to bed. (25b) Aya said she woke up at 6:30 a.m. and did not see her mother, so she called her, checked the master bedroom, and searched the house. (25b, 54b) Upstairs, she saw a light on in the west bedroom, so she went in, looked outside, and saw her mother on the patio. (25b) She called Defendant, and they went outside and called 911. (26b) Defendant said that he, his mother, and his sisters were the only ones there. (26b) His other sister, Sidra, who had some developmental disabilities, was asleep upstairs. (26b–27b) Ofc. Jordan asked if Nada had a history of depression or suicide attempts; Aya said no, but Defendant said he had seen her take pills in the past. (27b)

After speaking to the firefighters, Ofc. Jordan called for a supervisor because from his experience “[t]hings didn’t seem right,” such as the placement of Nada’s body. (9b, 27b–29b, 32b, 51b, 61b) He could not understand how she landed face-up and with her head toward the house. (30b, 32b) He realized it could be a suicide, but it was unusual that the children had found her. (30b) He then asked the children more about Nada’s morning habits. (33b) Aya said Nada usually woke up by 5:00 a.m. to clean before taking them to school at 6:30 a.m. (33b) Defendant, who had previously said he woke up at 6:00 a.m. and heard his mother, now said he woke up at 6:30 a.m. and realized they were late. (33b) Neither of them had seen her that morning. (34b)

Ofc. Jordan then had someone stay with the children because a firefighter asked for an escort through the large house and up to the bedroom to assess how Nada had landed and the injuries she might have. (34b–35b, 64b, 69b) The bedroom appeared to be a guest room with a window about 3 to 3 ½ feet off the ground. (35b–36b) A step ladder with a bottle of Tilex on top

of it sat beneath the window. (36b) The windowpane on the right side, which swung outward, was open, and there appeared to be spray marks on the outside. (36b) When Ofc. Jordan looked outside and down, the dent in the stucco ledge was more noticeable than it was from below. (36b–37b) Both he and the firefighter tried to determine how Nada went out the window, struck the ledge, and landed like she did, but they could not come up with a scenario. (37b–38b, 47b)

Back downstairs, Ofc. Jordan asked Defendant and Aya if they had moved Nada's body, but they said no. (38b) He asked if they had any family members nearby, and they said their father lived relatively close but that their parents were divorcing. (39b) Ofc. Jordan had Defendant call his father, Bassel. (39b, 56b, 70b) Ofc. Jordan explained the situation to Bassel, who eventually agreed to come over despite some reservations because he was barred from the home by a court order and tether. (40b, 57b–58b, 140b)

Detective Ryan Molloy arrived at the home before 8:00 a.m. (75b – 77b, 125b, 130b) The house was "very big," at least 8,000 square feet. (114b) He saw Nada's sheet-covered body lying on the patio. (77b) She had been pronounced dead, and the medics were leaving. (77b–78b) The window from which she was believed to have fallen was open and had no screen, and Det. Molloy saw an indentation in a ledge just below it. (78b) The lack of blood alarmed him because he assumed that falling out a window would result in some sort of injuries. (85b–87b)

Bassel soon arrived. (42b) He said again that he was on probation and was not supposed to be there, but Det. Molloy told him he would handle it. (80b, 140b–141b, 154b) Bassel had not been at the house in over a year. (84b) When Det. Molloy told him that Nada was dead, he "appeared distraught." (42b, 79b, 152b) Det. Molloy explained that her death was not "natural," and he asked Bassel if they could investigate. (85b) Bassel said he did not have a problem with that. (85b, 132b) He was then escorted inside to see the children. (42b)

Sergeant Richard Wehby also responded to the scene. (176b–179b, 208b) Bassel was in the garage with some of the other officers when he arrived. (180b–181b) The sergeant spoke privately to one of the officers about the situation, and he learned that although Bassel was on a tether and was not supposed to be there, he was the homeowner and was called to come care for the children because they had no relatives in the country. (180b–182b) He then went to the patio. (182b–183b) He noticed the placement of Nada’s body seemed “different” than what he would have expected if she had fallen. (184b–185b, 217b) He also noticed there was no blood on the ground, even though her head was lying on the concrete. (186b)

Det. Molloy and Sgt. Wehby then went up to the guest room, where they saw the ladder and Tilex bottle, which was suspicious; Det. Molloy had “cleaned a lot of windows” and “never used Tilex.” (87b–88b, 133b 190b–191b) A fluid had been sprayed on the outside of the closed part of the window, leaving streaks but no smear marks that would have suggested someone was trying to clean it. (189b–191b) Both men thought the ladder’s position and the Tilex bottle being upright were suspicious if Nada was supposed to have slipped off the ladder. (88b–91b, 190b–191b) There were no signs of a struggle. (128b, 213b) There was a lot of makeup in the bathroom, which turned out to be Nada’s makeup room. (213b, 228b–229b) Looking outside, Sgt. Wehby saw what looked like black hairs near the indentation in the ledge. (192b)

Walking through the rest of the “[v]ery big house,” the sergeant found a workout room, a sauna, and several bedrooms, each with attached bathrooms. (114b, 193b–194b) In the laundry room, a front-loading washer that held some built-up water and a bathmat was flashing an error code. (194b) The dryer held some jeans and a pair of boy’s underwear. (194b–195b, 220b)

Ofc. Jordan, Det. Molloy, and Sgt. Haro then walked around the house to look for signs of forced entry, but they found none. (40b–41b, 50b–51b, 66b, 79b, 88b) They discussed how Nada

could have fallen, and they agreed her body's placement and the "whole situation" were "odd." (71b, 79b, 130b–131b, 155b) They noticed cameras around the home's exterior, one of which pointed at the patio. (41b, 51b–52b, 63b, 66b, 79b, 136b, 188b) Ofc. Jordan later asked Defendant about the cameras, and he said they did not work. (41b–42b, 63b, 217b) Det. Molloy also asked Defendant about the cameras, but he said he did not want to talk just then. (93b, 134b–135b) The detective asked Bassel about the cameras, but he also did not think they worked. (93b)

When the medical examiners arrived, they took more photos in addition to those already taken by Officer Stacy Swanderski, a police evidence technician. (42b–43b, 92b, 182b, 199b–201b) Bassel had asked Det. Molloy not to let the children see Nada's body, and he agreed. (92b–93b) Bassel and the children left a short time later, but not before Det. Molloy told Bassel that the investigation would be ongoing and that he would be in touch. (93b–94b, 137b) The detective left around noon to begin writing reports. (93b–94b, 126b–127b) The family returned after a while, and Bassel viewed Nada's body while the children stayed in the car. (197b–198b, 215b)

Back at the station, Det. Molloy learned of a call from the tether company about Bassel. (94b, 141b) After calling Bassel's probation agent for his tether information, he learned the tether showed Bassel had not otherwise entered the area near the house. (94b–95b) Det. Molloy and Sgt. Wehby received several more calls from members of the community and Nada's friends, either seeking information or urging them to keep investigating. (95b, 139b, 202b–203b)

*The Events of August 22, 2017:*

The next day, August 22, a woman who said she was the Altantawi family's decorator called Det. Molloy. (97b, 139b) She had spoken with the company that installed the cameras, and she assured him they worked unless they were unplugged. (97b, 136b, 171b) Det. Molloy told Sgt. Wehby that a video of the incident might exist. (98b, 142b–143b, 160b–161b, 210b, 212b, 218b–

219b) He and Det. Hammond already planned to go to the house, so he called Bassel to ask if he was there and if they could come by; Bassel said, “Sure, come on over.” (98b, 103b)

The detectives soon arrived at the house in an unmarked car. (103b) They were in plain clothes and kept their weapons covered. (98b–99b, 103b) Bassel answered the door when they knocked, and when Det. Molloy told him what he had learned about the cameras and asked to take a look at the system, Bassel agreed. (103b–104b) He did not know where the video equipment was located, so he led the detectives to two different places. (104b–105b, 134b)

When they could not find the equipment, Det. Molloy called the interior decorator, who gave him the phone number for Tellus, the company that installed the cameras. (106b, 144b–145b) After speaking to someone from Tellus, Det. Molloy found the camera system’s DVR on a small table in the furnace room off the second-floor workout room. (106b–107b, 134b) When Det. Molloy hung up his phone, he told Bassel the DVR was probably working if the lights were on and that they would like to take it to review the video. (108b, 164b) Bassel initially hesitated, but eventually he said it was “[f]ine” if they took it and that he did not think he had a problem with that. (108b–109b, 146b–147b, 151b, 159b) He was “[f]riendly” and “cooperative” the entire time, and the detectives never raised their voices with him. (109b, 146b, 158b, 163b) Det. Molloy then unplugged the DVR and said it would be returned as soon as they no longer needed it. (112b, 146b, 163b) He also asked if Bassel knew the system password, but he did not. (111b)

Before they left, Det. Molloy asked Bassel if Defendant was there, to check in on him and see how he was. (112b) Bassel said, “Yeah, he’s right here in his room” and that “it was okay” to talk to him. (112b) Det. Molloy asked Defendant how he was and then asked him about the cameras. (112b) Defendant knew how the system worked and said he thought Nada accessed it using an old phone, but he did not think the information would be on her new phone. (112b–113b)

He asked Det. Molloy if there were any cameras inside, and the detective said he only knew about the ones he saw outside. (113b) Det. Molloy also asked Defendant to go through the previous day again, and Defendant said he got up at 6:00 a.m. and showered. (113b–114b) Aya then told him Nada had fallen, and as she called 911 they ran outside to the patio. (114b–115b) He and Aya switched phones, and he spoke to 911 while doing CPR on Nada. (115b)

They also spoke about the atmosphere in the home, including the “contentious” divorce. (115b) Defendant said he got along better with his father, noting he had met Bassel for dinner and prayer several nights earlier. (115b–116b) Defendant said he and Nada argued a lot, but their relationship had been better lately. (116b) He said, though, he was not surprised she fell out the window because she had had “several car accidents in one week several months ago,” which the detective thought seemed like an odd statement. (116b–117b)

When the detectives got back to the station, they plugged the DVR into a monitor, tried different standard passwords, and found that one—the digits 1 through 7—worked. (117b–118b) A video taken at 5:55 a.m. the previous morning by the camera above the patio did not directly record the guestroom window. (118b–119b, 122b, 419b) However, a light from the room cast moving shadows on the ground below, and Nada’s body appeared after it came out the window and hit the patio.<sup>2</sup> (118b, 121b, 151b, 419b) A shadow, which appeared to be from a ladder when the video was slowed, then passed in front of the window. (121b–122b) Another shadow moved and disappeared, and the light went off. (121b, 419b–420b) The officers concluded after several viewings that there was “obviously” another person—who, from the shadows, appeared to be a male—in the room who “flipped” Nada’s body out the window. (122b–123b, 377b, 421b, 469b)

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<sup>2</sup> A medical examiner later testified at the preliminary examination that he concluded Nada died, before her body went out the window, of asphyxia by smothering and blunt force trauma to the head that occurred before the smothering. (*E.g.*, Tr 11/17/2017, at 69; Tr, 12/08/2017, at 9, 12, 50)

After seeing the video, the officers wanted to talk to the children again in the hope they could learn who had been in the room with Nada. (123b, 299b–301b, 338b, 422b) They knew “[t]here was a potential that [Defendant] was” a suspect. (337b, 386b) Sgt. Wehby and the two detectives returned to the house after 3:00 p.m., about two hours after the detectives were last there. (303b, 373b, 468b–469b) Sgt. Wehby had other officers on the way because he did not want the media on the property and a search warrant was being sought. (374b, 423b–424b, 470b, 474b, 496b–497b, 504b–505b) Officer James Bretz soon arrived and parked his marked car in a driveway across the street from the 350-foot driveway to 36933 Howard. (424b–427b, 470b–472b, 527b–528b) Sgt. Wehby had told him “to be in the area but not visible.” (529b, 537b) Ofc. Swanderski, who had the same instructions, also arrived. (531b, 538b, 548b–551b, 556b–557b)

Bassel answered the door when the detectives knocked, and they told him they wanted to talk to the children more about the timeline and asked who was there. (301b–302b, 374b, 382b, 407b, 414b, 430b) Defendant and Sidra were there, but Aya was at school. (302b, 431b–432b) The detectives did not mention the video. (382b) They asked if Bassel would bring the children to the station, but he did not want to frighten them and preferred that they talk at the house. (301b, 303b–304b, 374b–375b, 382b–383b, 423b, 430b–431b, 478b) He said it was fine for them to talk there and was “cooperative” and “welcoming,” so they agreed to his request. (303b–304b, 407b, 412b)

Sgt. Wehby followed Bassel upstairs and got Defendant, while Bassel went looking for Sidra. (347b–348b, 432b–437b, 486b) Back downstairs, Bassel said he had to go pick Aya up from the library bus stop, and Sgt. Wehby offered to have someone pick her up. (306b–307b, 383b, 438b, 499b) The library was several miles away, and the trip time would vary depending on traffic. (385b) Bassel declined and said he would go. (307b, 335b, 438b–439b, 499b) He then asked if he and Defendant could pray before he left, and they did so in the family room while the officers

waited nearby. (304b–306b, 439b–440b) Afterward, they asked Bassel where they could speak to Defendant, and he pointed to a large table in the dining area and said it was “fine” for them to talk to Defendant while he was gone. (306b–309b, 352b, 436b, 441b) He never told them to wait until he returned or that they could not speak to the children at all. (383b, 405b, 415b, 441b, 466b–467b)

Bassel left, and both Defendant and Sidra were still there. (309b, 335b, 415b, 437b, 440b–441b, 445b) Sgt. Wehby asked two detectives to follow Bassel to make sure he was really picking up Aya. (465b–466b, 474b–477b) He told the officers who were securing the area that Bassel would be returning; he never told them to keep him from coming back to the house. (483b, 497b)

Sgt. Wehby sat at the head of the table, with the detectives to his right and Defendant to the left, in his usual spot. (310b–311b, 341b–342b, 408b, 440b, 443b) The area behind Defendant was large and open. (445b) All 3 officers wore plain clothes that concealed their side arms. (300b, 311b, 410b, 427b–428b, 509b–511b) The blinds were closed, and no other officers were in the house or otherwise visible during the interview. (312b–313b, 409b–410b, 445b–446b, 458b, 473b)

The interview lasted 30 to 40 minutes and was recorded, and Sgt. Wehby did most of the talking. (313b, 315b–318b, 323b–324b, 342b, 351b, 395b) Defendant, who was age 16 and attended the International Academy, was not given *Miranda* warnings because he was not under arrest. (313b–314b, 318b, 340b, 352b, 387b, 404b, 495b) He was not handcuffed or restrained. (319b, 324b, 447b) The conversation’s tone was “regular,” with no yelling or threats. (314b) Defendant did not appear ill, injured, tired, hungry, or under the influence, and he never said he was hungry, thirsty, that he had to go to the bathroom, or that he needed any medication. (314b–315b, 403b, 448b–449b) He was not asked for a medical history but said he had an ear infection two days earlier. (340b, 489b–490b, 511b) He was not told he had to stay in his seat or that he had to answer anything. (318b, 340b, 387b–388b, 395b, 404b, 447b, 495b) He never asked to leave or

said he wanted his father. (324b, 404b) At one point, he got up, got a bottled water from a package on the counter, and then offered one to Sgt. Wehby. (447b–448b, 494b)

The detectives had already noticed some discrepancies in Defendant's statements about when he woke up the previous morning, so they asked him to talk about when he got up, what he did, and how he learned what happened to his mother. (314b, 320b, 353b–354b, 451b) He said he got up and showered, then Aya came and said Nada fell out a window. (320b) He then went to check on her. (320b) The detectives said they thought he knew more than he was saying. (320b) He gave a lot of detail at times, but then could not remember other things at all. (452b) When he talked about Aya, he said he really did not want to talk about her, but he noted she was awake before him and then said that was all he had to say about her. (512b)

The detectives used the word "accident" several times, saying that if Nada had an accident and Defendant knew, he needed to tell them. (342b–343b, 387b, 454b–455b, 488b, 491b–494b) Eventually, he said he did see Nada and that he left his room earlier than he previously indicated. (321b, 323b) He got up, went downstairs for water, saw Nada with some cleaning supplies, and returned to bed. (323b, 452b–453b) This change in his story made Det. Molloy suspicious. (320b–321b, 324b) However, the officers did not change their tone or become more aggressive, and Det. Molloy thought that "[i]f anything we changed it to be more sympathetic." (321b)

Eventually, one of the officers noted that there was a video and asked Defendant if he wanted to talk about it, but he twice said, "no." (389b–390b, 488b, 495b) His demeanor changed, and he sat "kinda slumped over in his chair" and looked away as he spoke. (321b–322b, 454b, 513b) Det. Molloy and Sgt. Wehby said the video showed someone in the room with Nada, and Defendant then said he had seen her and brought some cleaner to her, at her request. (324b–325b, 389b, 400b–401b, 453b–454b) She then asked him to hold the ladder, but he "wasn't really paying

attention.” (325b, 455b) He thought her clothes caught on the window crank and caused her to fall, and he could not grab her. (325b, 455b–456b) This scenario was one that Sgt. Wehby had suggested earlier, and Defendant “latched onto it.” (517b–518b) He then said he looked out, saw her on the ground, and went back to his room to shower, because “he wanted it to be a dream.” (325b–326b, 456b) When the detectives asked if he tried to help, he said he did not because he was “freaking out or he was nervous or scared.” (326b) He began to get emotional and cry. (322b, 389b, 456b) Det. Molloy told Defendant that his story was “pretty close to what happened but that’s not the whole truth and you know it, and . . . this is the time to tell us the whole thing,” but he said he did not want to think or talk about it anymore. (402b–403b)

Sometime during Bassel’s absence, Officers Bretz and Swanderski moved their cars to the driveway of 36933 Howard to replace the detectives who had been there. (531b–532b, 540b, 551b, 561b) Soon, a car pulled up to the driveway, and they stopped it because they were providing security. (532b–533b, 551b, 568b) The driver, Bassel, said he wanted to speak to his son in the house. (533b, 562b–563b) The officers did not have him exit his car or search him. (535b, 553b) Ofc. Bretz did not know Bassel and contacted Sgt. Wehby to ask if he should be let in, and when the sergeant said yes Ofc. Bretz told Bassel they would escort him. (533b–534b, 538b, 543b–544b, 554b, 565b, 569b) The officers were never instructed to detain Bassel or to prevent his return, and the entire interaction took 10 minutes at most. (534b–535b, 544b, 553b, 556b)

When Sgt. Wehby got a call that Bassel was in the driveway, he said, “they’re coming in, that’s fine, all right,” and went to talk to him while Det. Molloy kept talking to Defendant. (326b, 381b, 457b, 483b–484b, 500b–501b, 536b) Det. Molloy maintained a “friendly” tone. (326b–327b) Bassel was upset and asked Sgt. Wehby why there were so many police cars there, and he said he had talked to an attorney and wanted the interview to stop. (326b, 351b, 379b, 458b, 466b–

467b) He handed Sgt. Wehby his phone, and an attorney was on the line. (459b) Sgt. Wehby rounded the corner with Bassel, relayed his wishes, and ended the interview. (327b, 458b, 460b) Bassel commented that he had said “at the beginning did I need a lawyer,” but this was the first time he had said anything about an attorney since the officers arrived. (466b, 480b–482b)

Det. Molloy, Det. Hammond, and Sgt. Wehby then spoke to each other, and they all thought Defendant was the person who threw Nada out the window. (328b, 461b–462b, 515b) Sgt. Wehby called for an officer to arrest and transport him; however, he was not immediately arrested, handcuffed, or restrained, and he got up from the table, went to the family room, sat down, and “play[ed] on his phone.” (328b–330b, 461b) Det. Molloy later took the phone and said he was doing so as part of an arrest. (332b) Bassel wanted to know why this was happening, and Sgt. Wehby told him about the changing stories and video evidence. (462b–463b) About 15 or 20 minutes later, an officer arrived and took Defendant into custody. (319b, 330b–331b, 462b)

Just before 7:00 p.m., the police executed a search warrant, and during that detailed search they noticed some drag marks on the floor. (157b, 225b, 300b, 411b, 415b–417b, 463b–464b)

Defense Proofs:

Defendant’s father, Bassel Altantawi, was the sole defense witness. (232b) On August 21, 2017, around 7:30 a.m., he received a call asking him to come to the house on Howard Road, despite a protective order barring him from being there, because his wife was severely injured.<sup>3</sup> (233b) He arrived there around 8:00 a.m. and met with Det. Molloy and Sgt. Haro outside, and he was “devastated” to learn of his wife’s condition. (234b–235b) There were police all over the house, inside and out. (236b, 258b, 262b) Bassel took his children out to eat, and they returned

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<sup>3</sup> Bassel denied speaking to his son earlier that morning, and he claimed that the first he heard about this incident was when his son and the police called him about it. (294b, 623b–624b)

before noon. (235b–237b) Sometime after the police left, Det. Molloy called, asked if Bassel had told the children what happened, and said there was only a “small window” to do so because “people are calling” about it. (237b–238b, 265b–266b, 271b)

The next day, Det. Molloy called Bassel, asked where he was, and said “okay” and hung up when Bassel said he was “home.” (238b–239b, 272b) Det. Molloy and Det. Hammond soon knocked on the door of the Howard Road house, and when Bassel opened it Det. Molloy “barged” inside, said something about cameras, and asked where the DVR was. (238b–239b, 272b–274b) Bassel had been out of the house for over a year and said he did not know. (239b–240b, 276b) The detective then asked more questions about the camera system, and Bassel said he did not know anything about it because it was “more than 40 years” old. (240b) The detectives then went down to the basement and then up to the second floor, opening closets as they went, and Bassel just followed them. (240b–241b, 275b, 278b–279b) Eventually, Det. Molloy called the family’s interior designer and then Chris Enderman, who had installed the system and who guided him to a mechanical closet where the DVR was located. (241b–243b, 280b–283b) Bassel just watched and felt like “a stranger” who had “no say.” (241b, 281b)

Det. Molloy, who was still on the phone, went into the closet, unplugged the DVR, and carried it out, and then both detectives said something about “written consent.” (244b–245b, 296b–297b) Det. Hammond took Bassel into the hallway, and they started arguing about “the consent issue.” (245b, 284b) Bassel said “I think I need a written consent,” but the detective said, “I don’t think it’s needed.” (245b–246b, 249b–250b, 284b–285b) Bassel again said he needed written consent because “I don’t want you to get that device” and asked what Det. Molloy was doing. (246b, 288b) Det. Molloy then came out of the room with the DVR and started talking about people who were accusing Bassel of being involved in Nada’s death. (247b, 282b, 288b)

Bassel was “very uncomfortable.” (247b–249b) He noticed a gun on Det. Molloy’s hip. (281b–282b) He did not know he was being recorded, and at one point he said, “No, I don’t know” as they went back downstairs. (246b–247b, 285b, 287b) He later admitted saying “I guess I don’t have any issue with that,” but he claimed that he meant “I have no legal issues to keep fighting with you and you’re not listening to me.” (291b) Det. Molloy replied, “Appreciate it,” and Bassel said, “Appreciate what?” (250b) The detectives then asked his name, which he said before they left with the DVR.<sup>4</sup> (250b, 288b, 292b)

Around 3:20 p.m. that day, August 22, Bassel was at the house with Defendant and Sidra when “[m]ultiple officers,” including Sgt. Wehby, Det. Molloy, Det. Hammond, and two uniformed officers came to the door. (572b–573b) When he opened the door, they all came barging and charging into the house. (573b–574b, 600b, 603b) Sgt. Wehby said he wanted to “question [the] kids,” and Bassel immediately refused and screamed at them. (573b, 595b, 601b–602b) The officers surrounded him, “throwing a question and comment” and trying to get his consent to investigate, but he said, “no.” (573b) Det. Molloy said something about taking the kids, and Bassel said, “no” and that he wanted to get an attorney as the officers kept saying they wanted to talk to the kids. (573b–575b, 595b) Soon, the detectives “zoomed on” Defendant and asked where he was, and Bassel said he was probably upstairs in his room. (575b, 601b) The officers kept Bassel from going to check on either Defendant or Sidra, and three of them went upstairs while the uniformed officers stayed with him.<sup>5</sup> (576b–577b, 600b–601b, 603b)

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<sup>4</sup> Bassel later claimed he could not give consent for the detectives to take the DVR because he was banned from the home. (250b–251b) He admitted he and Nada co-owned the 10,000-square-foot house, but he was unsure if their pending divorce affected his ownership. (252b–253b, 263b)

<sup>5</sup> At the hearing, Bassel could not explain why a transcript of the recording of the encounter showed that Sgt. Wehby told Defendant that they would go downstairs and wait for Bassel to come downstairs if, as he claimed, he had never been allowed to go upstairs at all. (602b–603b)

Once the officers returned, they “continued to argue about they want to talk to my son and I tell them that I’m not allowing that.” (577b, 604b) Bassel also said that the family was supposed to go pick up Aya and go eat, but the officers told him, “No, nobody is going.” (577b, 604b) Eventually, Sgt. Wehby said only Bassel would be allowed to go pick up Aya.<sup>6</sup> (604b–605b) Before he left, the officers also refused to let him and Defendant go to the basement prayer room to pray, and they forced them to pray right there. (578b–579b, 607b–608b)

As Bassel then rushed toward the door to go get Aya, Det. Molloy again asked him if he could talk to Defendant. (579b, 619b) Bassel said “no,” and they argued. (579b, 619b) Finally, he believed the officers would not talk to Defendant, who had an ear infection and was medicated. (594b–595b, 621b–622b) Bassel was “screaming loud to . . . make it clear to them.” (594b) Sgt. Wehby then said, “No big deal, we were trying to nail down some times but nothing big,” so Bassel said “okay” and left. (620b–621b)

Bassel left and rushed to get Aya, and he was “back in about seven, eight minutes.” (580b, 582b–583b) When he left, the driveway was “full of police cars,” about six or seven total. (580b–581b, 608b–609b) An undercover police car, which he identified as such from watching TV, started following him on Howard Road and went all the way to the library and back. (582b, 598b–599b) When he returned, there were two police SUVs blocking his driveway. (583b) Bassel spoke with a female officer, who knew him and told him that he was not allowed to go back to the house per Sgt. Wehby’s orders. (583b–584b) Bassel told her to contact Sgt. Wehby, and he also told her to have them stop talking to Defendant because he realized they “violate[d] my refusal not to talk” to Defendant and had “hijacked my house and my kids.” (584b–585b, 609b) She said, “Okay, Sir,” and went to her car while he stood, waited, and watched her talk on the radio. (585b)

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<sup>6</sup> Bassel also could not explain why none of this was in the transcript. (605b–607b)

After 10 minutes, Bassel went back to his car, picked up his phone, and began calling attorneys as well as a friend who was “very familiar, unfortunately, with [this] kind of situation.” (586b–587b) This took 8 to 10 minutes, and he then began arguing with the officer again. (587b–588b) He was angry, because he owned the house and wanted to go inside. (616b–617b) He again told the officer to contact Sgt. Wehby, and she said, “Okay,” and returned to her car. (589b) He waited a few minutes, then returned to his car to check on Aya, who was becoming upset. (589b) Eventually, the police moved one of the SUVs and escorted him to the house. (589b–590b, 616b) It had been 25 or 30 minutes since he had returned. (590b, 627b)

Bassel did not have a key, so he rang the doorbell for several minutes until Sgt. Wehby responded. (591b, 616b–617b, 627b–628b) As he put a foot inside, he saw Defendant crying while “Molloy [was] all over him and with the gun on his waist.” (591b, 617b) He demanded to know what was going on and said, “I told you not to talk to my son,” and Det. Molloy shouted, “step out.” (591b, 617b–618b, 622b) Sgt. Wehby escorted him outside, they argued, and Bassel said he wanted an attorney “to protect me and my kids from you guys coercion.” (593b–594b, 617b–618b)

At the evidentiary hearing, Bassel claimed he had 44 years of education and was a doctor certified in four areas of medicine, but his license was suspended in January 2017 after he pled guilty to four counts of insurance fraud. (253b–257b, 599b) He wore a tether because he had pleaded to a Domestic Violence charge involving Nada; that case was dismissed in April 2018.<sup>7</sup> (609b–612b) He admitted that tether records showed he left the house at 3:27 p.m. and stayed in the library parking lot from 3:34 to 3:39 p.m. (612b–613b) He admitted the records might show he returned at 3:47 p.m. because he may have spent extra time looking for Aya, but he did not agree there was a big difference between a 7-minute and a 20-minute absence. (614b–615b)

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<sup>7</sup> The case was first deferred under MCL 769.4a, which requires a finding of guilt or a guilty plea.

**The Court's Ruling:**

On November 20, 2018, the trial court issued its ruling. (638b) The court had listened to the testimony and the recordings and reviewed the transcripts and pleadings, and it summarized the “odd situation” of Nada’s death that led the police to seek the DVR.<sup>8</sup> (638b–639b)

On the issue of whether Bassel validly consented to the police taking the security system DVR, the court concluded that Bassel validly consented because there was no coercion and because he owned the house and its contents. (639b–643b)

On the *Miranda* custody issue, the court noted Defendant alleged that the police should have questioned him in Bassel’s presence and given him *Miranda* warnings because he was in custody. (643b–644b) Thus, the court had to objectively examine the totality of the circumstances to determine if a reasonable person would “find that he was not at liberty to terminate the interrogation and leave.” (644b) Defendant’s age was a factor the court could consider. (644b)

The court noted that after the police reviewed the DVR video, they returned to the house and asked Bassel to bring the children to the station for questioning. (644b) Bassel did not want to traumatize them, so the police agreed to speak to them there. (644b–645b) When the police first said they wanted to question them, Bassel asked, “Should I have an attorney here?” (645b) The officers said “[i]t’s just standard procedure,” and they just wanted to get a timeline of events. (645b) Defendant and his youngest sister were there. (645b) His other sister was at school, and Bassel said he had to go pick her up, declined an offer to send an officer to get her, and chose to go himself, which the officers allowed. (645b) The officers asked Bassel if they could talk to Defendant in his absence. (645b–646b) The court noted that although it was not part of the

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<sup>8</sup> The court had admitted several exhibits during the evidentiary hearing. Copies of the non-audio exhibits (except Exhibit #17, an oversized image on poster board) were previously provided to the Court with the People’s initial answer to Defendant’s application for leave to appeal.

transcript, “if you listen to the audio . . . [Bassel] must – appears to be talking to [Defendant], and asked him if that was okay if they talked to him and the [D]efendant’s answer is not completely audible, but it appears that he seems to indicate he doesn’t have a problem with that.” (646b)

The police questioned Defendant at the dining room table of the family home, and he sat in the chair he normally used when he ate at the table. (646b) Sgt. Wehby sat at the head of the table only after asking permission to do so, while the detectives sat across from Defendant. (646b) The court noted Defendant was in his own home, which was “a substantially large home by all accounts,” and he was not handcuffed or told he could not move. (646b–648b) The interview lasted less than 40 minutes, which “certainly was not an appreciable length of time.” (647b) Defendant was not told he was under arrest until after the interview, and “[h]e certainly had no inclination to think that he was under arrest and couldn’t move about” during it. (647b–648b) At one point, he went to get some water and came back. (647b–648b) He could have gone up to his room, and “[t]here would be nothing that the police could do at that point in time.” (648b)

The detectives asked Defendant about the day before Nada died and about certain things he had said, and during the interview he changed his story. (646b) “[T]he only thing that changed during the interrogation” was when they mentioned the video, which “showed that there was someone else in the room with his mother, it appeared to be a male and that they knew that there was more to what had happened other than what he was telling them.” (647b) He became more defensive, and “when he didn’t want to talk about something or when he was done talking about something he said so and he stopped.” (647b) The court noted “he certainly could have stopped talking at any point,” and “[he] seemed to indicate that he knew he could.” (647b)

The court further found that Bassel’s “testimony on this witness stand was not credible based upon what [the court] heard on the audio,” which included the time periods when he was

there. (648b) While Bassel “claimed that the police barged in,” he actually “let them into his home.” (648b) There were no raised voices or arguing, he was not threatened or told he had to bring the children anywhere, and the police agreed to his request to speak to them at home. (648b–649b) When they asked if they could talk to Defendant while Bassel was gone, he “asked [Defendant] if that was okay with him and it appears from the audio that [Defendant] said, ‘yes,’ and that’s the way it proceeded.” (649b) The court also rejected Bassel’s testimony that the house was “swarming with police” and noted that any officers who were outside were not visible from inside. (649b) The court found that Bassel’s testimony that the police kept him from going upstairs early on “was totally fabricated” based on the transcript and recording, that he “exaggerated the amount of time”—by twice the actual time—that he was kept in the driveway by the other officers, and that it took him longer than he claimed to pick up Aya. (649b–651b) Sgt. Wehby met him when he returned and stopped everything when he said so. (651b)

The court concluded that the only notable issue it had was the fact that Defendant was 16 years old at the time of the interview; however, the court also knew he attended the International Academy, “a school for extremely bright students.” (651b–652b) Based on the audio, it was apparent that Defendant is “a bright young man” who “did understand what was going on.” (652b) The court did not get the impression that he was afraid to refuse to talk to the police because of his age, and he “understood how much information to give” and only expanded his story if questioned further. (652b) When he knew the officers suspected Nada’s death was not accidental, he said he did not want to talk about it anymore. (652b) The court concluded that “[t]hat does not strike this court as someone who, because of his age, was incapable of putting an end to questioning if he wanted to, of knowing that he didn’t have to answer the questions.” (652b) Accordingly, “[e]ven though [Defendant] was 16,” the court did not find a basis to suppress his statements. (652b–653b)

**Interlocutory Appeal:**

The Court of Appeals granted Defendant's subsequent interlocutory application for leave to appeal and, ultimately, affirmed the trial court's orders denying both aspects of his motion to suppress.<sup>9</sup> (5a–14a) As to the custody issue, after reviewing the entire record the Court found that Bassel allowed the police into the Altantawi family home. (12a) The police told him that they sought clarification on the timeline of events. (12a) He offered them an opportunity to speak to the children at the home, and he then left to pick up Aya after declining an offer by the police to do so for him. (12a) Before he left, the police asked if they could talk to Defendant while he was gone. (12a) He spoke to Defendant, who appeared to agree to speak with them. (12a)

The Court further found that Defendant and the police sat in the dining room, which opened into other areas of the house. (12a) Defendant was not ordered to sit there or told he could not leave, and he was never told he had to answer any questions. (12a) He never asked to end the interview or leave, and at one point stood up to get a bottle of water and use the restroom. (12a) His movements were not restricted, and he was not restrained in any way. (12a) He was not arrested or told that he was under arrest before the interview, which lasted about 40 minutes. (12a–13a) The Court noted that nothing in the record indicated Defendant was subjected to a coercive questioning environment; the police asked questions, and Defendant "freely responded" to the questions he felt like answering. (13a) When he did not want to talk about a topic any further, he said so and stopped. (13a) The officers never attempted to force him to speak further on those topics, and the "spoke in a reasonable tone and did not raise their voices." (13a) They also expressed "sensitivity" when Defendant expressed grief at losing his mother. (13a) When the police suggested that Nada may not have accidentally fallen on her own, Defendant initially denied

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<sup>9</sup> Judge SERVITTO concurred on the consent issue but dissented on the custody issue. (15a–17a)

he was in the room with her, but he then “offered contradictory facts and gradually changed his story” and placed himself in the room and said he had held the ladder for her. (13a) The interview was later discontinued at Bassel’s request, and Defendant was not arrested right away. (13a)

The Court also noted that the record showed that the trial court did analyze the totality of the circumstances and “made findings consistent with the testimony of witnesses at the evidentiary hearing and the evidence presented” to the court. (13a) This included listening to the recorded interview and making credibility determinations, which were supported by the record. (13a)

The Court found that the record did not establish that Defendant was pressured by the police or otherwise “hindered in his ability to act under his own volition.” (13a) The Court could not conclude “that a reasonable person would not have felt at liberty to discontinue the interview and leave.” (13a) The Court concluded that the entire record established that Defendant was not placed in a custodial environment or subjected to a custodial interrogation. (13a–14a)

Defendant seeks leave to appeal before this Court. The People now file a supplemental brief pursuant to the Court’s order directing argument on the application regarding the *Miranda* custody issue only. (18a) Additional pertinent facts or procedural history may be discussed in the body of this brief’s Argument section to the extent necessary to more fully advise this Honorable Court as to the issues raised.

### SUMMARY OF THE ARGUMENT

Defendant was not in “custody” for *Miranda* purposes when he was interviewed on August 22, 2017. *Miranda* warnings are required only when the environment where questioning occurs presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda* itself. Defendant, however, was not even seized, let alone restricted in his movement to a degree associated with a formal arrest or subjected to the coercive pressures associated with station house questioning. He was willingly interviewed by three plainclothes officers, whose weapons were concealed, in comfortable, familiar settings—the dining area of his family’s spacious home—rather than the cold, unfamiliar surroundings of a police station house or a school office. He was never physically restrained. He was not coerced or threatened, and he was never told that he had to stay where he was or that he had to answer the officers’ questions. He was not questioned in an aggressive or hostile manner, and the officers’ exhortations that he should tell the truth did not transform the interview into an aggressive or hostile interrogation. The interview only lasted 38 minutes, after which Defendant sat on the living room sofa and used his phone. Although he was 16 years old at the time, this was not a determinative or even a significant factor in the custody analysis given the familiar setting where the interview took place and his educational background. Accordingly, the trial court did not err when it concluded *Miranda* warnings were not required before the interview because Defendant was not in custody at the time, and the Court of Appeals did not clearly err when it affirmed the trial court’s order denying the motion to suppress.

## ARGUMENT

I. **Defendant was not in custody because his freedom was never curtailed to a degree associated with formal arrest when he was willingly interviewed at the dining room table of his family's spacious home without any restraints for 38 minutes by three plainclothes police officers whose weapons were concealed, and his age is not a determinative or significant factor in that conclusion given both the setting and his educational background.**

### ***Standard of Review & Issue Preservation:***

Whether a person is “in custody” for *Miranda* purposes is a mixed question of law and fact. *Thompson v Keohane*, 516 US 99, 102; 116 S Ct 457; 133 L Ed 2d 383 (1995). Factual findings are reviewed for clear error. *People v Williams*, 472 Mich 308, 313; 696 NW2d 636 (2005); MCR 2.613(C). “Clear error exists if the reviewing court is left with a definite and firm conviction that a mistake has been made.” *People v Miller*, 482 Mich 491, 497–498; 647 NW2d 480 (2002). The ultimate ruling on a motion to suppress is reviewed de novo. *Williams*, 472 Mich at 313. Decisions of the Court of Appeals are also reviewed for clear error. MCR 7.305(B)(5)(a).

This issue was preserved for appellate review by Defendant's motion to suppress.

### ***Discussion:***

Defendant was not in custody because his freedom was not curtailed to a degree associated with formal arrest when he was willingly interviewed by three plainclothes officers for only 38 minutes in a familiar setting, the dining area of his family home, without any restraints, coercion, or threats. He was never told he had to stay where he was or answer questions. While he was 16 years old, that fact was not a determinative or significant factor in the custody analysis, because of both the setting where the interview took place and Defendant's educational background. Defendant simply was not subject to the same inherently coercive pressures as traditional station house questioning. Accordingly, this Court should either deny Defendant's application or affirm the Court of Appeals' opinion, because the trial court correctly denied the motion to suppress.

### A. The law regarding *Miranda* custody.

In *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), the United States Supreme Court held that “the Fifth Amendment’s prohibition against compelled self-incrimination requires” that an individual must “be given a series of warnings before being subjected to ‘custodial interrogation.’”<sup>10</sup> *People v Elliott*, 494 Mich 292, 301; 833 NW2d 284 (2013), quoting *Miranda*, 384 US at 444. “Custody” under *Miranda* requires a greater restraint on the subject’s freedom than a seizure under the Fourth Amendment. *See Berkemer v McCarty*, 468 US 420, 437–438; 104 S Ct 3138; 82 L Ed 2d 317 (1984) (holding that *Miranda* warnings were not required during a traffic stop). A person is in “custody” for *Miranda* purposes only when they have been either formally arrested or subjected to a restraint on their freedom of movement to the degree associated with formal arrest. *Maryland v Shatzer*, 559 US 98, 112; 130 S Ct 1213; 175 L Ed 2d 1045 (2010).

In further defining what constitutes “custody” for *Miranda* purposes, the United States Supreme Court has explained that:

As used in our *Miranda* case law, “custody” is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion. In determining whether a person is in custody in this sense, *the initial step* is to ascertain whether, in light of the “objective circumstances of the interrogation,” a “reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave.” And in order to determine how a suspect would have “gauge[d]” his “freedom of movement,” courts must examine “all of the circumstances surrounding the interrogation.” Relevant factors include the location of the questioning, its duration, statements made during the interview, the presence or absence of physical restraints during the questioning, and the release of the interviewee at the end of the questioning. [*Howes v Fields*, 565 US 499, 508–509; 132 S Ct 1181; 182 L Ed 2d 17 (2012) (internal citations omitted, emphasis added).]

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<sup>10</sup> These warnings include that the individual has the right to remain silent, that any statement made can be used against the individual in court, and that they have the right to the presence of an attorney, either retained or appointed. *Miranda*, 384 US at 444.

Additionally, when the person questioned was a minor and that fact was known to the police or would have been objectively apparent, including the person's age "in the custody analysis is consistent with the objective nature of that test." *JDB v North Carolina*, 564 US 261, 277; 131 S Ct 2394; 180 L Ed 2d 310 (2011). Age, though, may not be "a determinative, or even a significant, factor" in the custody analysis, *id.*, and a reviewing court still must consider whether *a reasonable person in the subject's position* would feel free to leave. *Yarborough v Alvarado*, 541 US 652, 667; 124 S Ct 2140; 158 L Ed 2d 938 (2004).

Although a seizure is a necessary prerequisite to *Miranda*, e.g., *Oregon v Mathiason*, 429 US 492, 495; 97 S Ct 711; 50 L Ed 2d 714 (1977) (per curiam), the Supreme Court has explicitly "decline[d] to accord talismanic power" to the initial freedom-of-movement inquiry, because, as previously noted "[n]ot all restraints on freedom of movement amount to custody for purposes of *Miranda*." *Id.* at 509, quoting *Berkemer*, 468 US at 437 (internal quotation marks omitted). "Our cases make clear . . . that the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody."<sup>11</sup> *Howes*, 565 US at 509, quoting *Shatzer*, 559 US at 112. If, however, a reasonable person would not have felt free to leave the encounter, then further inquiry into "whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*," *Howes*, 565 US at 509, is required, because, again, not every seizure automatically constitutes custody for *Miranda* purposes. *Berkemer*, 468 US at 439–440. A court still ultimately must determine whether a reasonable person would have understood that their freedom of action had been curtailed to a degree associated with formal arrest. *Shatzer*, 559 US at 112.

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<sup>11</sup> Thus, if "a reasonable person would have thought he was free to leave the police encounter at issue," then "the *Miranda* inquiry is at an end; the challenged interrogation did not require advice of rights." *United States v Newton*, 369 F3d 659, 672 (CA 2, 2004).

Furthermore, a *Miranda* “custody” inquiry must consider the totality of the circumstances. *California v Beheler*, 463 US 1121, 1125; 103 S Ct 3517; 77 L Ed 2d 1275 (1983). The inquiry is objective and does not depend on “the subjective views harbored by either the interrogating officers or the person being questioned.” *Stansbury v California*, 511 US 318, 323; 114 S Ct 1526; 128 L Ed 2d 293 (1994). It also should not require the police either to attempt to consider circumstances that were “unknowable” to them at the time or to “anticipat[e] the frailties or idiosyncrasies” of the subject being questioned. *JDB*, 564 US at 274, quoting *Yarborough*, 541 US at 662 and *Berkemer*, 468 US at 430. “The reasonable person through whom [a court] view[s] the situation must be neutral to the environment and to the purposes of the investigation—that is, neither guilty of criminal conduct and thus overly apprehensive nor insensitive to the seriousness of the circumstances.” *United States v Bengivenga*, 845 F2d 593, 596 (CA 5, 1988). *See also Florida v Bostick*, 501 US 429, 438; 111 S Ct 2382; 115 L Ed 2d 389 (1991) (noting, in the Fourth Amendment context, that the reasonable person test presupposes an innocent person).

**B. The Court of Appeals and the trial court correctly concluded Defendant was not in “custody” for *Miranda* purposes during the interview.**

In this case, the trial court made factual findings following the evidentiary hearing (643b–651b), in which it clearly found the officers’ version of events credible. *See In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). *See also People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000) (“[I]f resolution of a disputed factual question turns on the credibility of witnesses or the weight of the evidence, we will defer to the trial court, which had a superior opportunity to evaluate these matters.”). Based on the totality of the circumstances, *Beheler*, 463 US at 1125, the trial court correctly concluded that Defendant was not “in custody” for *Miranda* purposes, *Howes*, 565 US at 508–509, as discussed in greater detail below. The Court of Appeals did not clearly err by affirming the trial court’s decision. *Miller*, 482 Mich at 497–498.

**1. Given the objective circumstances of the interview, a reasonable person in Defendant's position would have felt free to end the interview and leave.**

The trial court properly considered several objective factors when it first analyzed whether a reasonable person in Defendant's position would have believed he was constrained to a point equivalent to formal arrest. *Howes*, 565 US at 509; *Shatzer*, 559 US at 112. The court correctly concluded that these factors showed a reasonable person in Defendant's position would have felt free to end the interview and leave the room where it took place.<sup>12</sup> Each factor is discussed below.

**a. An in-home interview is generally considered noncustodial for *Miranda* purposes.**

The location where an individual is questioned by law enforcement is one factor in the freedom-of-movement inquiry, *Howes*, 565 US at 508–509, and it carries substantial weight. Although questioning at a police station does not automatically mean that an individual is in “custody,” *Mathiason*, 429 US at 495, the overall idea of questioning in that particular environment ultimately informs the conclusion as to whether an individual is in “custody” for *Miranda* purposes even if they are questioned elsewhere. *See Howes*, 565 US at 509 (explaining that a court must also, after analyzing freedom-of-movement, ask “whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*.”).

Unlike questioning in a typically police-dominated environment like a station house, “[i]nterrogation in a suspect's home is usually viewed as noncustodial.” *People v Coomer*, 245 Mich App 206, 220; 627 NW2d 612 (2001), quoting *People v Mayes (After Remand)*, 202 Mich App 181, 196; 508 NW2d 161 (1993) (CORRIGAN, P.J., concurring). *See also Beckwith v United States*, 425 US 341; 96 S Ct 1612; 48 L Ed 2d 1 (1976) (concluding that *Miranda* warnings were

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<sup>12</sup> Additionally, it must be noted again that Defendant himself did not testify and never indicated that he did not feel free to leave much less believe that he was constrained to a point equivalent to formal arrest.

not required when the petitioner was questioned in his home by IRS agents because, although he was the focus of their investigation, he was not in custody).<sup>13</sup> A person's own home is, after all, hardly the type of "police-dominated, coercive atmosphere" envisioned by *Miranda*. *People v Ish*, 252 Mich App 115, 118; 652 NW2d 257 (2002). *Miranda* itself involved questioning in a police station. *Elliott*, 494 Mich at 325. The *Miranda* Court emphasized the fact that its now-ubiquitous warnings were necessary in order to advise individuals being questioned by the police of their constitutional rights precisely because such individuals were (and are) frequently removed from places of comfort and placed into "unfamiliar surroundings" where their interrogators have several psychological advantages. *Miranda*, 384 US at 450.

In certain instances, though, questioning in a subject's home nonetheless may be deemed custodial for *Miranda* purposes if it is transformed into a "police-dominated environment." *United States v Faux*, 828 F3d 130, 136 (CA 2, 2016). For example, in *Orozco v Texas*, 394 US 324; 89 S Ct 1095, 22 L Ed 311 (1969), the Supreme Court held that a murder suspect was in custody for *Miranda* purposes when he was questioned by four officers in his boardinghouse bedroom at 4:00

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<sup>13</sup> Courts across the country have long recognized that, although the fact that an interview occurs in a subject's home is not dispositive, it is a factor that generally weighs strongly in favor of a finding that the questioning was noncustodial. *E.g.*, **1) federal courts:** *United States v Luck*, 852 F3d 615, 621 (CA 6, 2017) (holding that the defendant was not in custody for *Miranda* purposes and noting that he "was questioned in his own home, a fact that typically weighs against" a finding of custody); *United States v Faux*, 828 F3d 130, 138 (CA 2, 2016) (same); *United States v Williams*, 760 F3d 811, 815 (CA 8, 2014) (same); *United States v Czichray*, 378 F3d 822, 826–827 (CA 8, 2004) (same); *United States v Photogrammetric Data Servs*, 259 F3d 229, 241 (CA 4, 2001) (same), overruled in part on other grounds by *Crawford v Washington*, 541 US 36, 64; 124 S Ct 1354; 158 L Ed 2d 177 (2004); **2) state courts:** *State v Staats*, 658 NW2d 207, 212 (Minn, 2003) (noting that "questioning taking place in the suspect's home" is a circumstance that may indicate a suspect is not in custody and ultimately holding that the defendant was not in custody); *Commonwealth v Conkey*, 430 Mass 139, 144; 714 NE2d 343 (1999) (holding that the defendant was not in custody because, in part, his "initial interview . . . took place in the familiar surroundings of his residence and with his acquiescence."); *Peterson v State*, 813 P2d 685, 691 (Alas App, 1991) ("Custody is less likely to exist when the questioning occurs in the suspect's home.").

a.m. *Id.* at 325, 327. The officers entered the room without permission after being admitted to the building by an unidentified woman, and they testified that the suspect was “under arrest” as soon as he gave them his name. *Id.* at 325. Generally speaking, it is precisely in instances like *Orozco*—*i.e.*, when an individual’s home is entirely overrun by law enforcement, thereby leaving nowhere for the person to go—that courts may conclude that the environment was police-dominated and that the location of the questioning weighs in favor of a finding of custody. *E.g.*, *United States v Hammond*, 263 F Supp 3d 826, 835 (ND Cal, 2016) (finding that the environment became police-dominated when 14 law enforcement officers arrived at the defendant’s home at 6:00 A.M.); *United States v Freeman*, 61 F Supp 3d 534, 545 (ED Va, 2014), quoting *United States v Hashime*, 734 F3d 278, 284 (CA 4, 2013) (finding that the defendant was in custody in part because his home was “swarming” with 21 federal and state agents, effectively causing him and his family to “[lose] control of the home for a substantial period of time while it was occupied by law enforcement officers.”).<sup>14</sup> *But see Faux*, 828 F3d at 136 (noting that the presence of 6 officers, by itself, would not lead a reasonable person in the defendant’s position to conclude he was in custody).

This case, however, stands in sharp contrast to cases where a police-dominated environment has been found. Here, Sgt. Wehby, Det. Molloy, and Det. Hammond arrived at the Altantawi family home in the mid-afternoon of August 22, 2017, were allowed into the house by

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<sup>14</sup> Defendant cites to *United States v Craighead*, 539 F3d 1073 (CA 9, 2008), in which a Ninth Circuit panel identified four factors that a court may consider when evaluating whether in-home questioning occurred in a police-dominated atmosphere. These include: 1) the number of law enforcement personnel present and whether they were armed; 2) whether the suspect was at any point restrained, either by physical force or by threats; 3) whether the suspect was isolated from others; and 4) whether the suspect was informed he was free to leave or terminate the interview, and the context in which any such statements were made. *Id.* at 1084. As will be discussed in greater detail in the main body of the text of this subsection, even considering these factors the facts of this case simply do not show that the spacious Altantawi family home was transformed into a police-dominated atmosphere.

Defendant's father, Bassel, and agreed to his request that they speak to Defendant at the home. (301b–304b, 374b, 382b, 407b, 412b, 414b, 430b) All three officers wore plain clothes that concealed their sidearms. (300b, 311b, 410b, 427b–428b, 509b–511b) Before they even spoke to Defendant, he and Bassel prayed together while the officers waited in another room. (304b–306b, 439b–440b) Bassel then left the house of his own accord to pick up his eldest daughter, Aya, from a bus stop at a library several miles away. (306b–307b, 383b, 385b, 438b, 499b) Bassel had declined an offer to have someone pick Aya up so that he could stay with Defendant while he was interviewed. (307b, 335b, 438b–439b, 499b) Before he left, Bassel had asked Defendant if Defendant was okay speaking to the officers while he was gone, and Defendant appeared to say that he was.<sup>15</sup> [Interview Recording, at 7:40–7:42.]

Both Defendant and his youngest sister, Sidra, stayed at the house after Bassel left. (309b, 335b, 415b, 437b, 440b–441b, 445b) Defendant and the officers sat at a large table in the dining area, which was adjacent to a large, open space, with Defendant seated in the spot he normally sat in for meals. (304b–306b, 310b–311b, 341b–342b, 408b, 439b–440b, 443b, 445b) The home was between 7,000 and 10,000 square feet in total size. (114b, 216b, 219b, 263b, 509b) It was the same home where Defendant had essentially functioned as ‘the man of the house’ for over a year in his father's absence. (84b) Defendant was never physically restrained or threatened. (314b, 319b, 324b, 447b) Sgt. Wehby sat at the head of the table with the detectives to his right, across from Defendant; none of them was close enough to physically hinder his movement. (310b–311b, 341b–342b, 408b, 440b, 443b, 445b) The blinds were closed, and there were no other officers in the

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<sup>15</sup> The trial court made a specific factual finding on this point. (646b) Such findings should not be lightly disregarded. MCR 2.613(C). *See also Anderson v Bessemer City*, 470 US 564, 573–575; 105 S Ct 1504; 84 L Ed 2d 518 (1985) (indicating that a trial court's “major role is the determination of fact, and with experience in fulfilling that role comes expertise” and that a reviewing court oversteps its bounds if it undertakes to duplicate the role of the lower court).

house or otherwise visible during the interview. (312b–313b, 409b–410b, 445b–446b, 458b, 473b) Defendant was not told that he had to stay or answer any questions, although he was not told that he was not under arrest or that he was free to leave the interview. (318b, 340b, 387b–388b, 395b, 404b, 447b, 495b) At one point, Defendant left the table for a bottle of water, offered one to Sgt. Wehby, and then sat down again without being asked or told to do so. (447b–448b, 494b) When Bassel returned, the police let him in and stopped the interview at his request. (327b, 458b, 460b) Defendant then sat in the living room and used his phone. (319b, 328b–332b, 461b–462b)

The factual record shows that the officers’ questioning of Defendant in his own home clearly weighs in favor of a finding that he was not in custody. The house was not swarming with police; there were only three plainclothes officers, whose sidearms were all concealed, present with Defendant and his sister inside the massive Altantawi family home. *Faux*, 828 F3d at 136. Unlike the officers in *Orozco*, they did not barge in; rather, Bassel let them inside.<sup>16</sup> See *Orozco*, 394 US at 325. Defendant was never restrained in any way, and the officers did not isolate him from Bassel, *who left the house of his own accord*<sup>17</sup> *only after conferring with Defendant to ask if Defendant was okay speaking to the officers in Bassel’s absence.*<sup>18</sup> *United States v Craighead*, 539 F3d 1073, 1084 (CA 9, 2008). Although Defendant was not told that he could leave or stop the interview, *id.*, the weight of that fact is minimal at best because he also was not told that he had to stay or to answer questions. He also felt comfortable enough in his familiar surroundings, *Miranda*,

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<sup>16</sup> The Court of Appeals and the trial court both noted this fact. (12a, 648b)

<sup>17</sup> The Court of Appeals and the trial court both also noted this fact. (12a, 645b)

<sup>18</sup> Defendant attempts to place great emphasis on his claim that he was “ordered” downstairs by a detective before the interview began. [Defendant’s Brief, at 24.] However, having Defendant come downstairs *to wait for his father* after telling him that they were “just trying to narrow down some stuff, just trying to make sure every thing’s covered and everything like that,” is hardly a command. (153a) However, even if it was, the fact that Defendant was then allowed to talk to and pray with Bassel before Bassel asked him if he was okay speaking to the officers while he was gone would have undoubtedly mitigated any coercive effect of the detective’s prior statement.

384 US at 450, that during the interview he stood up, got a water bottle, and offered one to Sgt. Wehby, while after it ended he moved to the living room and used his phone. These facts clearly belie the notion that the home was transformed into a coercive, police-dominated environment from which there was no escape or relief. *United States v Williams*, 760 F3d 811, 815 (CA 8, 2014) (noting that the subject was allowed to get water, showing he had freedom of movement and suggesting he was not in custody). Likewise, if the home had truly been turned into a police-dominated atmosphere, then it is highly unusual that Bassel was allowed back in *at all*. (See 651b)

The fact that Defendant's interview occurred in the familiar setting of his own home, *Miranda*, 384 US at 450, where he both was unrestrained and retained substantial freedom of movement, *Howes*, 565 US at 508–509, rather than in a police-dominated environment, *Orozco*, 394 US at 325, thus weighs strongly in favor of a conclusion that Defendant was not in custody. The trial court did not clearly err in its factfinding on this point. *Miller*, 482 Mich at 497–498.

**b. The age of an individual questioned by police, even when that person is a juvenile, does not apply to the exclusion of all other factors when determining whether the person is in custody for *Miranda* purposes and may not be a determinative or even a significant factor.**

When an individual questioned by the police was a minor, a court may also consider the person's age if it was known to the interviewer or would have been apparent. *JDB*, 564 US at 277. Age, however, does *not* apply to the exclusion of all the other factors that are part of a *Miranda* custody analysis. *Id.* (noting that age may not be “a determinative, or even a significant, factor” in the custody analysis); *People v NAS*, 329 P3d 285, 289; 2014 CO 65 (Colo, 2014) (“The juvenile's age, however, is not dispositive; rather, courts should weigh it alongside other relevant factors to ascertain whether the juvenile was in custody.”). Moreover, age is less significant to the custody analysis the closer the individual is to the age of majority. *JDB*, 564 US at 277; *State v Jones*, 55 A3d 432, 440; 2012 ME 126 (2012); *State v Pearson*, 804 NW2d 260, 269 (Iowa, 2011).

An individual's age may also have more—or less—significance to the custody analysis when viewed in context with the location where the questioning takes place. The questioning of a juvenile at his or her school, for example, is more likely to lead to a conclusion that age is a more pertinent factor in the analysis. As the Supreme Court explained in *JDB*:

Neither officers nor courts can reasonably evaluate the effect of *objective circumstances that, by their nature, are specific to children* without accounting for the age of the child subject to those circumstances. . . . [T]he effect of the schoolhouse setting cannot be disentangled from the identity of the person questioned. A student—whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action—is in a far different position than, say, a parent volunteer on school grounds to chaperone an event, or an adult from the community on school grounds to attend a basketball game. *Without asking whether the person “questioned in school” is a “minor,” the coercive effect of the schoolhouse setting is unknowable.* [*JDB*, 564 US at 276 (emphasis added).]

See also *BA v State*, 100 NE3d 225, 232–233 (Ind, 2018) (noting that a “student’s age” is a relevant factor in a “school setting” when analyzing whether he was in custody and finding that a 13-year-old who was escorted to and questioned in a school office by a uniformed officer was in custody).

Conversely, a juvenile's age is less significant to the *Miranda* custody analysis when the questioning occurs in a setting that is more familiar to and less antagonistic toward minors, such as their home. The case of *State v Jones*, *supra*, is instructive on this point. In *Jones*, the 17-year-old defendant and his girlfriend brought their three-month-old daughter to the hospital with serious injuries, and she died four days later. *Jones*, 55 A3d at 435. Police questioned the defendant three times: at the hospital, at his apartment, and at a police barracks. *Id.* During the first interview, he told a detective that he had been holding the baby with one arm when she jerked backwards, fell, hit her crib, and then hit the floor. *Id.* He denied shaking or striking her, and he agreed to allow the detectives to make a recording of him at his apartment reenacting what had happened. *Id.*

Three detectives came to the apartment the next morning, and the defendant had his mother wait outside while the detectives recorded the reenactment, which took about six minutes. *Id.* at

435–436. Afterward, two detectives stayed to talk to him. *Id.* One mentioned that other officers had found marijuana roaches and plants in the apartment, but then said the police did not care, and it was not brought up again. *Id.* They then spoke at length about the defendant’s relationship and family life before mentioning that the hospital’s medical team had determined the baby’s injuries were non-accidental. *Id.* The defendant maintained that the baby had fallen, and he continued to claim he was being truthful when the detectives said they did not believe him. *Id.* Altogether, this interview, including the reenactment, lasted just under 80 minutes. *Id.*

The defendant was questioned again a few days later at a police barracks, after the baby’s death, and he eventually admitted to a detective that he threw her into the crib and caused her to hit her head. *Id.* at 436–437. He was charged with manslaughter and bound over for trial as an adult. *Id.* at 437. He later moved to suppress the statements from the three interviews, alleging that he had been subject to custodial interrogations without *Miranda* warnings. *Id.* The trial court denied the motion. *Id.*

On appeal after a conditional guilty plea, Maine’s Supreme Judicial Court affirmed the trial court’s ruling and held that the defendant was not in custody for any of the interviews. *Id.* at 438–440. With respect to the interview at the apartment, the Court noted that the process was “non-confrontational: it took place in surroundings familiar to Jones, the detectives were in plain clothes, and Jones had the option of having his mother present.” *Id.* at 439. Moreover, the Court noted that the interview lasted “well under two hours, and Jones was not restrained in any way.” *Id.* While the detectives did tell the defendant that they believed he was not being truthful with them, “given the totality of the circumstances, a reasonable person in Jones’s position would have felt free to leave.” *Id.* The Court also agreed with the trial court’s determination that the defendant’s juvenile status was “an insignificant factor” because he had been 17 years old, declined to have his mother

present, and generally “was functioning in the world as an adult” such that “there is no basis to treat his age as a significant factor in a custody analysis.” *Id.* at 440.<sup>19</sup>

Many of the facts in *Jones* overlap with those in this case. (See Part I.B.1.a, *supra* for full facts and record citations.) Like in *Jones* and unlike in *JDB*, where the questioning occurred in a schoolhouse, in this case there are absolutely no “objective circumstances that, by their nature, are specific to children.” *JDB*, 564 US at 276. Although Defendant was age 16 at the time of his interview on August 22, 2017, he was questioned at the dining room table of his own home, in the same spot he usually occupied. This was the same home where he had lived and essentially functioned as ‘the man of the house’ for over a year during his father Bassel’s absence. Only three plainclothes officers were present with him, in a home that was somewhere between 7,000 and 10,000 square feet; no other officers were inside or visible outside because the blinds were closed. The three officers came to the house only after calling Bassel first and asking if they could come over. Bassel let them in when they arrived, and they did not question Defendant until after he and Bassel prayed and after Bassel left to pick up his eldest daughter from her bus stop several miles

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<sup>19</sup> Courts across the country have similarly concluded that a juvenile’s age is not a dispositive or even a significant factor when questioning occurs in his or her home and that such questioning is generally considered noncustodial. *E.g.*, *State v Castillo*, 329 Conn 311, 322–324; 186 A3d 672 (2018) (holding that the 16-year-old defendant was not in custody when questioned by three officers for 45 minutes in his own home with no restraints while his mother, who had invited the officers inside, was present); *State v Jensen*, 161 Idaho 243, 249–250; 385 P3d 5 (2016) (same for a 17-year-old defendant questioned at his home in the presence of a friend for 10 to 12 minutes); *In re DLH, Jr.*, 2015 IL 117341, ¶¶ 49–56; 32 NE3d 1075 (2015) (same for a nine-year-old respondent questioned by a single officer twice, for 30 to 40 minutes each time, at the kitchen table of his home with his father present); *State v SJW*, 149 Wash App 912, 927–929; 206 P3d 355 (2009) (holding that the defendant was not in custody, even though he was not told he could leave, when his interview occurred in a private residence familiar to him, when the questions were not obviously accusatory in nature, when he chose not to answer some of the questions asked, and when his mother terminated the interview when the detective tried to obtain a written statement); *People v Howard*, 92 P3d 445, 451–452 (Colo, 2004) (holding that the 17-year-old defendant was not in custody when consented to be questioned without restraints by a detective for seven minutes, just outside his house and without his parents present, about an alleged sexual assault on his sister).

away. Before Bassel left, he clearly asked Defendant if he was okay talking to the officers while Bassel was gone. Defendant clearly had the option of having Bassel present for the interview, yet neither of them offered any objection to Defendant speaking to the officers alone.<sup>20</sup> The interview itself lasted only 38 minutes, and the officers' tone was not aggressive, confrontational, or threatening, even though, like in *Jones*, they at times suggested that Defendant was not telling them the whole truth. [See Interview Recording.] Quite simply, an evaluation of the circumstances in this case can reasonably be made without considering Defendant's age, which clearly was not a dispositive, or even a significant, factor in this case. *Id.* at 277.

Defendant again contends, as he has previously, that the trial court improperly considered his education and intelligence in its *Miranda* custody analysis. The People maintain that Defendant misconstrues what the court *actually* did: to the extent that the court looked at his education and intelligence, the record is clear that the court's inquiry was directed only at what weight should be given to a particular factor, *i.e.*, Defendant's age. (651b–652b) It was not considered as part of the overall custody analysis. As previously discussed, *JDB* emphasizes that a defendant's age may not be a determinative or even a significant factor. *JDB*, 564 US at 277. It falls, then, to the court conducting a *Miranda* custody analysis to determine when age is or is not a determinative or significant factor. The setting where the questioning occurs is, of course, one pertinent consideration. *Id.* at 276 (“Without asking whether the person ‘questioned in school’ is a ‘minor,’ the coercive effect of the schoolhouse setting is unknowable.”). *JDB* and its predecessor cases also caution against burdening the *police* with having to anticipate both 1) facts “unknowable” to them

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<sup>20</sup> The trial court noted that Bassel can be heard early in the recording asking Defendant if it is okay for the officers to speak to him. While Defendant's answer is garbled, the court noted “it appears that he seems to indicate he doesn't have a problem with that.” (646b) Moreover, his actions—*i.e.*, **sitting down and answering questions once Bassel left, without any protest**—clearly suggests his answer to his father's question was ‘yes.’ [Interview Recording, at 7:40–7:42.]

at the time of questioning and 2) the individual idiosyncrasies of the person being questioned; however, such considerations are only improper if they are directly incorporated into the *Miranda* custody analysis itself. *Id.* at 274; *Yarborough*, 541 US at 662; *Berkemer*, 468 US at 430.

Yet, what should a *court* make of certain background facts that were not only *knowable* to the police at the time of questioning but actually *were known*, especially when they can aid the court as it considers how much weight to give to the defendant's age as part of a *Miranda* custody analysis? Must a court willfully ignore the facts? It should not, so long as they are only considered narrowly, within the confines of the age factor rather than as part of the overall custody analysis.

In this case, the testimony at the evidentiary hearing established that when the officers questioned Defendant on August 22, 2017, they knew that he was 16 years old and that he attended the International Academy; in fact, it was Defendant's cross-examination of Det. Molloy that established the latter fact. (340b) When the trial court later ruled on Defendant's motion, it likewise noted both his age and where he went to school. (651b–653b) In explaining why it was not giving much weight to Defendant's age—*i.e.*, why Defendant's age was not a significant or determinative factor, *JDB*, 564 US at 277—the court noted that it was in part because he attended “a school for extremely bright students” and because it was apparent from the audio recording that he was “a bright young man” who understood what was going on.<sup>21</sup> (651b–652b) It is simply a commonsense conclusion on the part of the trial court that the numerical age of a well-educated teenager who was questioned in his own home, rather than at his school or a police station, does not and should not carry significant weight in the overall *Miranda* custody analysis. *JDB*, 564 US at 279–280 (noting that police officers and judges do not need specialized training to account for a juvenile's

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<sup>21</sup> The court especially took note of Defendant's statements, because it was apparent he “understood how much information to give,” only elaborated if questioned further, and declined to expand on specific topics he did not want to discuss further. (652b)

age, but rather that “[t]hey simply need the common sense to know that a 7-year-old is not a 13-year-old and neither is an adult.”).

The trial court did not clearly err in its factfinding on this issue. *Miller*, 482 Mich at 497–498. Thus, the court’s overall conclusion that Defendant’s age was not a determinative or even a significant factor in its custody analysis was sound.<sup>22</sup> *JDB*, 564 US at 277.

**c. Other factors may also weigh in favor of a conclusion that police questioning did not occur in a custodial environment.**

As noted above, several factors other than the location of questioning and the defendant’s age also should be considered as part of a *Miranda* custody analysis. *Howes*, 565 US at 508–509. The trial court did not err in its factfinding on any of those factors. *Miller*, 482 Mich at 497–498.

One factor is the duration of the questioning. *Id.* at 509. Generally, interviews lasting 90 minutes or less weigh against a finding of custody. *See, e.g., Mathiason*, 429 US at 495 (holding that a half-hour, voluntary interview was not a custodial interrogation); *People v Mendez*, 225 Mich App 381, 383; 571 NW2d 528 (1997) (same for a 90-minute interview). *But see Yarborough*, 541 US at 665 (holding that a two-hour interview weighed in favor of a finding of custody). In this case, Defendant’s interview lasted less than 40 minutes. (313b, 315b–318b, 323b–324b, 342b, 351b, 395b) Sgt. Wehby began interviewing Defendant about 11 minutes into the audio recording and continued until Bassel returned and ended it 38 minutes later—hardly a grueling, marathon session.<sup>23</sup> Moreover, the interview was preceded by very little delay, and Defendant was not transported anywhere by either his father or the officers that caused a delay before it began. Thus, this factor also weighs heavily in favor of a conclusion that Defendant was not in custody.

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<sup>22</sup> Even if the Court concludes that the trial court improperly incorporated aspects of Defendant’s background into its full custody analysis, any such error was harmless because Defendant’s age should still be given little to no weight for the reasons stated earlier in this subsection.

<sup>23</sup> Audio was also recorded both before and after the interview.

A second factor is what statements are made before and during the interview. *Howes*, 565 US at 509. For example, when officers tell an individual being interviewed—even a juvenile—that they just want the truth, without threats or coercion, such statements do not tilt the nature of the questioning in favor of a finding of custody. *See In re JS*, 2016-Ohio-255, ¶¶ 30–31 (Ohio App, 2016) (holding that the juvenile was not in custody when the plainclothes officers told him that they wanted him to tell the truth but did not threaten or coerce him while interviewing him in a large, open space in his home for 20 or 30 minutes). Similarly, “wanting to know someone’s whereabouts during the commission of a crime does not automatically translate into a custodial inquisition producing inculpatory statements to the inquisitor.” *In Interest of VH*, 788 A2d 976, 981; 2001 PA Super 324 (2001). Defendant was not told that he was required to stay or to answer any questions. (318b, 404b, 447b) Contrary to his assertions,<sup>24</sup> the officers remained calm, non-accusatory, and non-confrontational throughout the interview, even when his story radically changed.<sup>25</sup> (320b–321b, 324b) Ultimately, because Defendant was not told he had to stay or to talk, and because the officers never assumed an otherwise accusatory or confrontational tone that

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<sup>24</sup> Defendant’s own statements during the interview are also telling. In his supplemental brief, he again repeatedly refers to his statements to the detectives as a confession and makes references to false confessions and the dangers thereof. A “confession,” however, is “[a] criminal suspect’s oral or written acknowledgement of guilt, often including details about the crime.” *Black’s Law Dictionary* (9th ed), p 338. *However, at no point during his interview did Defendant ever acknowledge guilt or give any details of criminal activity.* In fact, the record shows quite the opposite: although Defendant changed his story bit by bit as the detectives revealed more of what they knew, *he steadfastly maintained that his mother’s death was simply a tragic accident.* His statements were, in effect, an apparent false claim of innocence. While those statements may ultimately be contradicted by other evidence, such contradictions do not transform the statements themselves into a confession or the questioning itself into a custodial interrogation. *See, e.g., People v Peerenboom*, 224 Mich App 195, 199; 568 NW2d 153 (1997) (“[T]hat [the defendant] had the presence of mind to lie weighs strongly in favor of her own free and unconstrained will, as opposed to having resulted from an impairment of her self-determination.”).

<sup>25</sup> As the Court of Appeals noted from its review of the record, “The police spoke in a reasonable tone and did not raise their voices.” (13a)

might have acted as a verbal restraint, this factor weighs in favor of a finding that Defendant was not in custody or is, at most, neutral in that regard.<sup>26</sup> *Howes*, 565 US at 508–509.

A third factor is the use of physical restraints, the absence of which generally weighs against a finding of custody. *Id.* at 509, 515; *Yarborough*, 541 US at 664.<sup>27</sup> As previously discussed in Part I.B.1.a, *supra*, Defendant was not physically restrained in any way. Moreover, the officers kept their weapons concealed, they did not sit close enough to Defendant to hinder his movement, and he was able to stand up and walk over to the kitchen counter during the interview to get a bottled water without being stopped. Thus, this factor also weighs in favor of a conclusion that Defendant retained freedom of movement and thus was not in custody.

A final factor to consider is whether the individual is released after questioning. *Howes*, 565 US at 509. A subject being released after an interview weighs against a finding that he or she

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<sup>26</sup> Additionally, to the extent that Defendant asserts [Defendant’s Supplemental Brief, at 19 n 15] that he was ordered to remain at the table when he offered to take the officers upstairs to give a demonstration of certain things he was describing (180a), he is incorrect. The officers simply responded that it was sufficient for him to continue verbally describing the scene. (180a) It is also clear from this interaction that Defendant was not attempting to end the questioning by leaving the officers’ presence; rather, **he wanted to continue the interaction**, in another location, by not just telling the officers *what* had allegedly happened but to also show them *how* it had happened.

<sup>27</sup> Courts have long recognized that the absence of restraints weighs in favor of a finding that an individual was not in custody. *E.g.*, *United States v Ludwikowski*, 944 F3d 123, 132 (CA 3, 2019) (concluding that the defendant was not in custody because “[t]o start, [he] was not physically restrained.”); *United States v Lowen*, 647 F3d 863, 868 (CA 8, 2011) (concluding that the defendant was not in custody because, in part, his “freedom of movement was not restrained by handcuffs or any other means.”); *People v Clark*, \_\_\_ P3d \_\_\_, \_\_\_; 2020 CO 36, ¶ 33 (Colo, 2020) (“[W]e have relied on the absence of handcuffs or other restraints as suggesting that the suspect was not in custody.”); *State v Lonkoski*, 346 Wis 2d 523, 542; 2013 WI 30; 828 NW2d 552 (2013) (“During the relevant portion of the interview, Lonkoski was not handcuffed, no weapons were drawn by the officers, and no frisk was performed. . . . These factors indicated a lack of custody.”). Moreover, even the use of restraints prior to questioning does not necessarily render an interrogation custodial. *E.g.*, *United States v Bershchansky*, 958 F Supp 2d 354, 383 (EDNY, 2013) (“The issue of whether agents physically restrained a defendant is generally a relevant factor in determining whether a reasonable person would feel free to leave. Even the use of handcuffs prior to an interrogation, however, does not automatically render the interrogation custodial.”) (citation omitted).

was in custody. *Mathiason*, 429 US at 495. In this case, after Defendant's interview ended, he got up, went into the family room, sat unrestrained on the sofa, and used his phone for a while. (319b, 328b–332b, 461b–462b) His arrest later was a reasonable development given the new information the officers learned during the interview, rather than being pre-planned before the interview began. Because the interview occurred at the Altantawi family home, Defendant's post-interview movement was more limited than if he had left a police station. However, the fact that he was allowed to move about in a home that was, by various estimates, between 7,000 and 10,000 square feet *and* to continue using his phone shows that he retained a degree of movement not associated with arrest. *Howes*, 565 US at 509. Ultimately, Defendant was released after the interview ended. *Mathiason*, 429 US at 495. Thus, this factor weighs in favor of a conclusion that Defendant was not in custody during the interview. *Howes*, 565 US at 508–509.

**2. Considering the totality of the circumstances, the trial court correctly concluded that Defendant was not in custody for *Miranda* purposes because a reasonable person in his position would have felt free to end the interview and leave the dining area and because he was neither formally arrested nor restrained to a degree associated with a formal arrest.**

Ultimately, the trial court correctly concluded that, under the totality of the circumstances, Defendant was not in custody during his interview. *Howes*, 565 US at 508–509; *Stansbury*, 511 US at 323. An objective review of the circumstances, assiduously undertaken by the trial court, shows that a reasonable person in Defendant's position would have felt free to end the interview and leave the dining area where it was taking place. *Howes*, 565 US at 508–509; *Yarborough*, 541 US at 667. Defendant was 16 years old. The interview, though, took place in his own home rather than a school or a police station. He sat in his usual place at the same table where he typically ate meals. He was never restrained in any way, and the officers only spoke with him for a total of 38 minutes. He clearly agreed to be interviewed, because the officers only questioned him *after* his

father asked him if it was okay that they do so while he went to pick up Defendant's sister from the bus stop. He was never told that he had to stay at the table or that he had to answer the officers' questions. He felt free enough to get up, walk away from the table, and get himself a bottle of water. When his father returned and ended the interview, he was allowed to sit in the living room and use his phone for a while. A seizure is a necessary prerequisite to a finding of *Miranda* custody, *Mathiason*, 429 US at 495, but Defendant simply was not seized in this case.

Furthermore, it is also clear that in addition to the fact that Defendant was not seized, he likewise was neither formally arrested nor restrained to a degree associated with a formal arrest. *Shatzer*, 559 US at 112. There were no events that involved "the shock that very often accompanies arrest" or that "may give rise to coercive pressures." *Howes*, 565 US at 511. Defendant was not cut off from his life or abruptly transported from the street to a police-dominated atmosphere. *Id.*, quoting *Shatzer*, 559 US at 106 and *Miranda*, 384 US at 456. Rather, he simply moved from one room in his family's spacious home to another—the same home where he had lived for years and where he had just spent the night in the care of his father. He then willingly sat down to speak with the officers, but only after his father conferred with him and asked if he was okay with doing so. While speaking to the police for a third time since his mother's death may have seemed annoying or inconvenient to Defendant, doing so in familiar settings simply "do[es] not involve the same 'inherently compelling pressures' that are often present when a suspect is yanked from familiar surroundings in the outside world and subjected to interrogation in a police station." *Howes*, 565 US at 511, quoting *Shatzer*, 559 US at 99.

Second, there is nothing in the record that would objectively indicate that Defendant had any reason to expect that speaking to the officers would turn out differently than it had the previous two times he spoke to them. On both prior occasions, the officers spoke with Defendant and then

left. In this instance, the officers also clearly told Defendant and his father (154a–155a), up front, that they were just trying to narrow down some of the times and circumstances of what happened, and when, the previous day. *See Stansbury*, 511 US at 324–325 (noting that an officer’s subjective views may be considered as part of a *Miranda* custody analysis, but only to the extent those views are “communicated or otherwise manifested to the person being questioned.”). Unlike a person who is taken off the street or from his home and thrust into a police station house for interrogation and who “may be pressured to speak by the hope that, after doing so, he will be allowed to leave and go home,” *Howes*, 565 US at 511, Defendant had no reason to believe that the police would do anything other than question him a third time about what he knew and then leave again. He also knew that his father would be returning soon.<sup>28</sup>

There is simply no indication that the environment where the interview occurred presented “the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*.” *Id.* at 509. Defendant was only isolated to the extent that he and his father chose to allow the interview to proceed during his father’s absence<sup>29</sup> but in the familiar surroundings of his

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<sup>28</sup> In his supplemental brief, Defendant continues to maintain that he “knew” that more police officers than the three inside the home with him were present on the property and that he “knew” that the other officers who were outside were blocking ingress and egress, and that he “knew” his father had been delayed or blocked [Defendant’s Supplemental Brief, at 8–9, 8 n 8], thereby contributing to a coercive atmosphere in which he felt isolated and compelled to speak. However, none of what Defendant now alleges he “knew” is in the record, ***because Defendant never testified***. He simply (and conveniently) based his “knowledge” of these things on statements by the three officers who were with him, which he may or may not actually have heard or may or may not have understood the meaning of even if he did hear it.

<sup>29</sup> Defendant continues to imply that the police improperly isolated him from Bassel. However, he wholly ignores that it was **Bassel’s** decision to leave during the interview *despite* Sgt. Wehby’s offer to have someone go to the bus stop to retrieve Aya so that Bassel could stay with Defendant. (306b–307b, 335b, 383b, 438b–439b, 499b) Moreover, the transcript and recording clearly show that, before Bassel left, neither he nor Defendant expressed *any* issue with Defendant talking to the detectives in Bassel’s absence. (153a–155a; 307b–309b, 352b, 438b, 441b) To the extent that Bassel may have claimed otherwise in his own testimony, the trial court found (648b–650b) that his testimony “was not credible.” *See Sexton*, 461 Mich at 752; *Miller*, 433 Mich at 337.

family home. *Miranda*, 384 US at 450. He was not “run through menacing police interrogation procedures.” *Id.* at 457. Thus, even if Defendant’s freedom of movement was restricted to some degree, he was not restrained to the degree associated with a formal arrest during this interview. *Howes*, 565 US at 509.

**C. Defendant’s remaining arguments on this issue lack merit.**

In his supplemental brief, Defendant again offers several arguments that he claims support a conclusion that he was in custody during the interview.<sup>30</sup> He is incorrect.

For example, Defendant again alleges that the detectives lied to him, such as by telling him that from their review of the video they “knew” *he* was in the bedroom with his mother before she went out the window. This assertion misconstrues the detectives’ statements, both by failing to take into account *what* they said and *when* they said it. The detectives did say more than once that they knew “*somebody*” else was in the bedroom with Nada and that they were almost certain it was a male. (170a, 172a (emphasis added)) However, the detectives never said they knew that person was Defendant *until after Defendant himself had already acknowledged that he had been in the bedroom with his mother at the time she went out the window.* (176a–178a) The statement by the detectives that they knew Defendant was in the room with his mother thus was merely them repeating what he had said—a far cry from the sinister implication that the officers told Defendant right from the beginning that they knew *he* was the person who had been in the room with his mother and somehow coerced him into admitting it.

Likewise, Defendant again asserts that he invoked his right to remain silent, but he misconstrues what was actually said during the interview in order to do so. Defendant’s reluctance

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<sup>30</sup> Many of Defendant’s arguments are addressed in other parts of this brief’s Argument section, *supra*, and therefore are not discussed again here. See Footnotes 18, 24, 26, 28, and 29.

to broach certain subjects or limit his answers were not assertions that he no longer wanted to speak at all. For instance, at one point Defendant stated “[t]hat’s all I have to say,” but when this statement is reviewed in context it is clear he only did not want to say anything further *about his sister*, whose actions on the morning of their mother’s death were being discussed at the time. (170a–171a) Later, **after** Defendant had already described how his mother had supposedly slipped and fallen out of the window in front of him, he then said, “She slipped over. I could’ve helped her but . . . I’m not . . . I don’t want to say anything.” (178a) One of the detectives then asked, “You don’t wanna [sic] say what?” (178a) Defendant replied “[M]ore about it.” (178a) Far from being unequivocal and unambiguous, Defendant was clearly attempting to simply avoid particular topics and limit his answers. His strategic attempts to conform his statements to the facts presented to him, to avoid certain subject matter, or to limit his answers were, as the trial court recognized, a clear demonstration that “the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*” simply were not present here. *Howes*, 565 US at 509.

#### **D. Conclusion.**

Ultimately, the trial court made numerous factual findings and credibility determinations as part of its ruling on the issue of whether Defendant was in custody for *Miranda* purposes during his interview. The Court of Appeals properly gave deference to those findings and determinations, and this Court should decline Defendant’s apparent invitation to engage in both new factfinding and credibility determinations. *Sexton*, 461 Mich at 752; *Miller*, 433 Mich at 337. Furthermore, as the Court of Appeals concluded, the trial court properly objectively evaluated the totality of the circumstances when it concluded, based on its factual findings, that Defendant was not in custody during a 38-minute, unrestrained interview by three plainclothes officers at a dining area table in the Altantawi family home, which he willingly participated in after first consulting with his father.

*Howes*, 565 US at 508–509. He was never coerced, threatened, or told that he had to stay or answer any questions, *id.*, and his age was not a determinative or even a significant factor in the overall conclusion that he was not in custody. *JDB*, 564 US at 277. The trial court did not err by denying Defendant’s motion to suppress his statements, *Williams*, 472 Mich at 313, and the Court of Appeals did not clearly err by affirming that ruling. *Miller*, 482 Mich at 497–498.

Accordingly, this Court should deny Defendant’s application for leave to appeal or, alternatively, affirm the decisions of the trial court and the Court of Appeals.

RELIEF

WHEREFORE, Jessica R. Cooper, Prosecuting Attorney in and for the County of Oakland, by Joshua J. Miller, Assistant Prosecuting Attorney, respectfully requests that this Honorable Court deny the interlocutory application for leave to appeal and allow this case to proceed to trial or, alternatively, affirm the decisions of the trial court and the Court of Appeals.

Respectfully submitted,

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